

**MODIFICATION #1
TO
CONTRACT NUMBER VA-981119-TAGI
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
STRATEGIC TECHNOLOGIES, INC.
(FORMERLY THE ALLIED GROUP)**

This MODIFICATION #1 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "DIT" (Department of Information Technology), and Strategic Technologies, Inc., hereinafter referred to as "Contractor" relating to the modification of Contract #VA-981119-TAGI. This Modification #1 is hereby incorporated into and made an integral part of Contract # VA-981119-TAGI.

Both parties hereby agree that the Contractor of record for this subject contract shall be Strategic Technologies, Inc. The Contractor's Federal Employee Identification Number ("F.E.I.N.") is 56-1622525. The new Accounts Receivable address for this Contract is PO Box 75550, Charlotte, NC 28275-0550.

From the date of final execution of this Modification #1 by both parties, the Contractor shall hereby be known as Strategic Technologies, Inc.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY
THE TERMS AND CONDITIONS OF THE CONTRACT.**

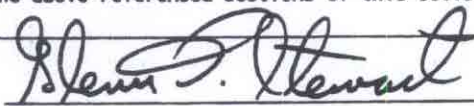
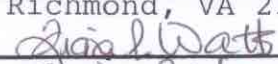

STRATEGIC TECHNOLOGIES, INC.

BY: Lori Prouty
NAME: Lori Prouty
TITLE: VP-Finance
DATE: 1-17-02

COMMONWEALTH OF VIRGINIA

BY: [Signature]
NAME: Jeff Davis
TITLE: Contracts Manager
DATE: 1-30-02

COMMONWEALTH OF VIRGINIA

| | | | | | | |
|---|------------|--|--|--------|--|--|
| SOLICITATION, OFFER AND AWARD DATA PROCESSING / TELECOMMUNICATIONS | | | | | FIN: 06-1127955 | |
| 1. Contract No: | 2. IFB No: | 3. Date Issued: | Date Due: | 4. APR | 5. Approval No: | |
| VA-981119-TAGI | 99-001 | Oct 9, 1998 | Oct 28, 1998 | 11 | A 15 | |
| For Information Call: J. B. Edmonds Jr. (804) 371-5948 | | | | | | |
| 6. ISSUING OFFICE: | | | 7. SHIP TO: | | | |
| Department of Information Technology Acquisition Services Division 110 S. 7th Street, Lobby Floor Richmond, Va. 23219 ATTN: Bid Section | | | Department of Information Tech Mr. Jim Adams 2nd Floor 110 South 7th Street Richmond VA 23219 | | | |
| SOLICITATION | | | | | | |
| 8. Sealed bid(s) for furnishing the equipment, software or services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Oct 28, 1998. | | | | | | |
| CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions | | | | | | |
| This is an advertised solicitation which consists of (1) the schedule of equipment, software and services, pages 2 thru 6; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-12; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference. | | | | | | |
| Offers will be publicly opened at: 2:10 p.m. local time Oct 28, 1998, in the ASD Conference Room, 110 South 7th Street, Lobby Floor. | | | | | | |
| All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation. | | | | | | |
| Glenn L. Stewart, Director Acquisition Services | | |  Signature | | | |
| OFFER | | | | | | |
| In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule. | | | | | | |
| 9. CONTRACTOR: | | | 10. BILL TO: | | | |
| Company Name: <u>The Allied Group, Inc.</u> Address: <u>2104 W. Laburnum Ave.</u> City, State: <u>Suite 100</u> <u>Richmond, VA 23227</u> Signature:  Name (Typed): <u>FIONA P. WATTS</u> Title: <u>Corporate Secretary</u> Phone: <u>804-204-1750</u> | | | Department of Information Tech Accounts Payable 3rd Floor 110 South 7th Street Richmond VA 23219 | | | |
| AWARD | | | | | | |
| 11. Accepted as to Item Numbers: | | | 12. Amount: | | 13. Award Date: | |
| Groups #1 and #2 | | | \$341,158.00 | | 11/19/98 Maintenance effective upon award. | |
| 14. Name of Contracting Officer: | | 15. COMMONWEALTH OF VIRGINIA | | | PAGES: | |
| Larry F. Schucht Contracts Manager | | By:  | | | 1 of 6 | |

| DIT-62A | | SCHEDULE | | IFB NO. | Page: |
|--------------------|--|----------|-------------------------|------------|--------------|
| 01/15/91 | | | | 99-001 | 2 of 6 |
| NAME OF CONTRACTOR | | | REQUIRED DELIVERY DATE: | INITIALS | |
| | | | (RDD) 30 DAYS ARO | | |
| ITEM NO | DESCRIPTION | QTY | UNIT | UNIT PRICE | EXTEND PRICE |
| 1. | SUN ULTRA-10 300Mhz workstations, with: a. 512k Cache b. 17" Color Display c. PGX Graphics onboard d. 256MB Memory e. 4.3GB hard disk, internal f. 24X CD-ROM, internal g. SUN Solaris 2.6 OS, or later h. 100 Mbit Ethernet adapter i. 1.44MB diskette drive j. SCSI PCI Adapter, with Fast-wide 68-68 pin SCSI cable k. 7-14GB Tape Drive | 3 | ea. | 9248 | 27444 |
| 2. | Annual Maintenance for Bid Item 1 (commencing upon warranty expiration) Unit pricing shall reflect the annual price for one unit. The extended price shall be the price for 3 units. <i>as agent for Sun - Seabachment</i> | 3 | ea. | \$1249. | \$3747.00 |
| 3. | Annual Maintenance only, for SUN ULTRA-1 Model 170E, 167Mhz UltraSPARC workstations, configured with: a. Solaris 2.x OS b. 20" Color Display c. CD-ROM drive, internal d. 128MB Memory expansion e. 2.1GB SCSI F/W hard disk, internal f. 4.2GB SCSI F/W hard disk, external g. Quad FastEthernet SBUS card (QFE) h. 10/100 Mbit FastEthernet SBUS adapter i. 1.44MB diskette drive j. SCSI PCI Adapter, with Fast-wide 68-68 pin SCSI cable k. 14GB 8mm Tape Drive, external Unit pricing shall reflect the annual price for one unit. The extended price shall be the price for 3 units. Maintenance shall commence for Item 3 on the date of execution of this contract by the DIT Contracts Manager. | 3 | ea. | \$2111. | \$6333.00 |
| TOTAL (Group 1) | | | | | \$ 37,824 |

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|--------------------|--|----------|-------------------------|------------|--------------|----------|--|
| DIT-62A | | SCHEDULE | | IFB NO. | | Page: | |
| 01/15/91 | | | | 99-001 | | 3 of 6 | |
| NAME OF CONTRACTOR | | | REQUIRED DELIVERY DATE: | | | INITIALS | |
| | | | (RDD) 30 DAYS ARO | | | | |
| ITEM NO | DESCRIPTION | QTY | UNIT | UNIT PRICE | EXTEND PRICE | | |
| 4. | <p>Annual Maintenance only, for SUN E 10000 Server, configured with:</p> <p>a. 1 - Enterprise E10000 Base Cabinet</p> <p>b. 1 - SOLS - 2.5.1. Solaris</p> <p>c. 1 - E10000 S/W for Alternate Pathing</p> <p>d. 1 - Enterprise NetBackup Software</p> <p>e. 1 - SSP Software</p> <p>f. 2 - E10000 System Service Processors</p> <p>g. 4 - AC Input Modules</p> <p>h. 8 - 48 Volt Power Supplies</p> <p>i. 16 - Fan Trays</p> <p>j. 1 - Power Control Module w/ cables to control boards</p> <p>k. 16 - E10000 System Boards</p> <p>m. 64 - 250 Mhz. Ultra SPARC module with 1MB external cache</p> <p>n. 8 - Dual SBUS I/O daughter cards</p> <p>o. 5 - SUN FastEthernet Card 10/100Mbit Adapters</p> <p>p. 8 - Memory boards</p> <p>q. 22 - 1 GB memory expansion (8X128MB SIMMS)</p> <p>r. 16 - SPARC Storage Arrays, Model 219 RSM</p> <p>s. 3 - SPARC Storage RSM Model 200 disk trays</p> <p>t. 8 - SBUS Differential Fast/wide Intelligent SCSI-2 host adapters</p> <p>u. 16 - 25MB SBUS Fibre Channel Adapter</p> <p>v. 32 - Fibre Channel Optic Module, Second Fibre Channel Port</p> <p>w. 1 - 400 - 800GB SparcStorage Library</p> <p>x. 2 - SUN FDDI SBUS Adapters</p> <p>Unit pricing shall reflect the monthly price for one unit. The extended price shall be the price for 12 months. If a discount is offered for annual payment, the vendor should so indicate on page 6. Maintenance shall commence either on the date of execution by the DIT Contracts Manager or on a specific date as designated by the DIT Contracts Manager upon execution.</p> | 12 | mo. | \$303,334. | \$303,334. | | |
| Total (Group 2) | | | | | \$303,334.00 | | |

per Attachment
 Allied Attachment: A
 as agent for
 Sun Microsystems

| | | | |
|--------------------|-------------------------|----------|--------|
| DIT-62A | SCHEDULE | IFB NO. | Page: |
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| NAME OF CONTRACTOR | REQUIRED DELIVERY DATE: | INITIALS | |
| | (RDD) 30 DAYS ARO | | |

1. Award will be made to the responsive and responsible vendor with the lowest cost for Items 1 through 3 as a group (GROUP 1) and Item 4 as a separate group (GROUP 2).
2. No-Bids are not required nor desired.
3. Shipping, FOB Destination, and installation shall be included for ITEM 1.
4. Additional bids must be submitted as separate bids.
5. All cables, connectors, interfaces, documentation and other items necessary for full operation at the user site must be included at the stated unit price.
6. The Commonwealth reserves the right to purchase up to 1 additional unit of Bid Item 1. Additional units, if elected, will be ordered within 60 days of award with delivery to be made within 30 days of receipt of order by the vendor.
7. The vendor must provide for ITEM 1 a 1 year ON-SITE warranty to include 7 x 24 support for all h/w and s/w supplied, and all parts, labor and travel charges. The Principle Period of Maintenance (PPM) shall be 7 days per week and 24 hours per day (7 x 24). Response time shall be on-site within 2 hours of notification, with repair or interim replacement provided within 24 hours. Upon expiration of the one year warranty, contractor shall, at the Commonwealth's option, provide an additional one year of on-site maintenance under the same conditions as described under on-site warranty.
8. The vendor must provide on-site maintenance which includes 7 x 24 hardware support with a maximum response time of two hours and a "return-to-service" time of no more than 24 hours. Software shall be 7 X 24 support and be provided via a toll-free number with a response time of two hours.
9. All components supplied must be acceptable for OEM maintenance.
10. Contractor must be either a SUN Enterprise Services Agent or a division of SUN Microsystems. All servicing personnel / engineers must be SUN authorized. Dispatch of SUN authorized engineers must be managed by SUN Enterprise Services. Contractor and DIT must have direct access to SUN Enterprises Solution Center for all SUN systems, hardware and software. Verification of a SUN agreement to provided the required services must be supplied upon request prior to award and at other times during the term of this contract, as deemed appropriate by the Contracts Manager, DIT.

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|--------------------|----------|-------------------------|---------|----------|
| DIT-62A | SCHEDULE | | IFB NO. | Page: |
| 01/15/91 | | | 99-001 | 5 of 6 |
| NAME OF CONTRACTOR | | REQUIRED DELIVERY DATE: | | INITIALS |
| | | (RDD) 30 DAYS ARO | | |

11. All vendors submitting proposals must be registered with the Department of Information Technology prior to award. The vendor's Federal Identification Number (FIN) should be placed, in the appropriate box, on Page 1 of the bid solicitation. In the event the vendor does not supply the appropriate identification number, DIT may not be able to verify registration and the vendor's bid may be ruled non-responsive. Registration forms are available from the issuing office or vendors may call (804) 371-5900 to request forms.

12. Bid results will not be given out by telephone. Vendors wishing bid results should submit a self-addressed, stamped envelope along with their bid. The envelope should have the bid number clearly noted on the outside.

13. Contractual Terms and Conditions are attached to this solicitation document. Neither DIT nor the using agency will sign or execute any additional contract, license or other agreements containing contractual terms and conditions as a result of this procurement. Any document signed by persons other than the Contracts Manager, DIT shall have no validity and the attached Terms and Conditions shall supercede all such agreements. Vendors should read and understand all of the terms and conditions prior to submission of a bid.

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|------------------------|----------|-------------------------|----------|
| DIT-62A | SCHEDULE | IFB NO. | Page: |
| 01/15/91 | | 99-001 | 6 of 6 |
| NAME OF CONTRACTOR | | REQUIRED DELIVERY DATE: | INITIALS |
| The Allied Group, Inc. | | (RDD) 30 DAYS ARO | |

PROPOSED CONFIGURATION

| ITEM | MODEL | MANUFACTURER | PROPOSED WARRANTY |
|------|----------|--------------------------|--|
| 1. | Ultra 10 | 300 Mhz Workstation Sun, | Sun Platinum Support 7X24 Phone, On-Site 2 Hour Response |

Name and Full Address of the Service Organization: [Required]

The Allied Group, Inc.
2104 West Laburnum Ave., Suite 100
Richmond, VA 23227

List any other applicable discounts (annual payment, etc).

Annual Prepayment Discount 5%
Two Year Contract Discount 8%
Three Year Contract Discount 12%

The following discounts were applied to this bid:

20% State of Virginia Discount
7% Allied Group Discount to VA Dept. of Information Technology
8% Volume Discount

Please Note:

The Allied Group Inc will supply maintenance as an agent for Sun Microsystems. ~~per attached Sun Microsystems Terms & Conditions which supersede the Commonwealth of VA Terms & Conditions~~

~~See Allied Attachment A~~

SEE LETTER FROM THE ALLIED GROUP
INC. DATED 11/16/98 LAF

SOLICITATION INSTRUCTIONS

REV. 07/17/97

1. EXPLANATION TO VENDORS

Any explanation desired by a vendor regarding this solicitation/invitation for bid must be requested in writing and with sufficient time allowed for a reply to reach the vendor before the submission of their bids. PRIOR TO SUBMISSION OF A BID, VENDORS ARE CAUTIONED TO READ THESE INSTRUCTIONS, REVIEW THE SCHEDULE, AND READ ALL TERMS AND CONDITIONS. THIS SOLICITATION IS SUBJECT TO THE PROVISIONS OF THE COMMONWEALTH OF VIRGINIA VENDOR'S MANUAL WHICH WAS REVISED IN JANUARY 1995 AND ANY REVISIONS THERETO, WHICH ARE HEREBY INCORPORATED INTO THIS CONTRACT IN THEIR ENTIRETY. A copy of the manual is available for review at the purchasing office, and can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing DPSs Electronic Bulletin Board for downloading - (804) 371-8346. Any interpretation required by the State will be in the form of an amendment to the solicitation; SEE PARAGRAPH 11 BELOW. Oral explanations or instructions given before the award of the contract will not be binding. In any conflict arising between this solicitation and the Vendors' Manual, this solicitation shall prevail.

2. PREPARATION OF SOLICITATION

- A. Bids shall be submitted on the forms furnished, and must bear an original signature by an individual authorized to bind the company submitting the bid. If erasures or other changes appear on the form, each erasure or change must be initialed by the person signing the bid. Telegraphic or facsimile bids will not be considered. Vendors may not submit multiple bids in a single envelope.
- B. Vendors are required to enter their Federal Identification Number [FIN] in the upper right hand corner on Page 1, DIT Form 62. This number must correspond with the FIN number shown on Page 1 of the DIT Vendor Application For Registration Form submitted by a principal or officer of the firm submitting the bid. Failure to enter a number in the space provided or to provide a correct FIN number may delay award or result in DIT determining that the vendor is not registered to conduct business with DIT. It is the vendor's responsibility to provide the correct FIN number and to keep DIT updated as to any changes in vendor's status.
- C. The bid form may provide for submission of a price or prices for one or more items. All prices shall be entered in the schedule; DIT Form 62A or 62B. Where the bid form explicitly requires that the vendor bid on all items (e.g., an all or none requirement), failure to do so will disqualify the bid. When submission of a price on all items is not required, vendor should insert the words "no bid" in the space provided for any item on which no price is submitted.
- D. Additional bids may be submitted, when in the vendor's judgment they can provide more than one solution which meets the required specifications of the procurement. Additional bids shall be submitted on either a duplicate copy of the bid document or on plain paper and shall be clearly identified with the words "ADDITIONAL BID" written or printed on the face of each additional bid. Additional bids shall not be considered unless detailed specifications or descriptions sufficient to establish quality, utility and merit accompany the bid.

VENDORS SUBMITTING ADDITIONAL BIDS ARE REMINDED THAT THE TERMS AND CONDITIONS WHICH APPLY TO THE ORIGINAL BID SHALL ALSO APPLY TO THE ADDITIONAL BID AND ANY MODIFICATION TO TERMS AND CONDITIONS OF A SOLICITATION OR THE ADDITION OF RESTRICTIVE PROVISIONS BY A BIDDER SHALL BE CAUSE FOR REJECTION OF THE BID.

- E. Modification of bids already submitted will be considered if received at the office designated in the invitation for bids before the time set for opening of bids.

3. SUBMISSION OF BIDS

TO BE CONSIDERED, THE BID MUST BE RECEIVED AT THE ADDRESS GIVEN IN BLOCK #6 OF THE SOLICITATION ON OR BEFORE THE DATE AND HOUR DESIGNATED. Vendors must pay particular attention to ensure that the bid is properly addressed. The State is not responsible if the bid is not properly addressed. The State is not responsible if the bid does not reach the destination specified by the date and time identified in block #8 page 1 of the Bid. Sealed bids received after the date and hour identified in block #8 are automatically disqualified, and will not be considered. All bids must be sealed, marked and addressed, to the address shown in block #6 of the Solicitation, and marked on the outside of the vendor's envelope as in the example below. Failure to do so may result in a premature opening of, or a failure to open, the bid.

| | |
|-------|------------------------------------|
| From: | Name of Vendor |
| | Street or Box Number |
| | City, State, Zip Code |
| | Due Date Time |
| | IFB No. |

4. SPECIFICATIONS AND USE OF BRAND NAMES

Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bids to the specific brand, make or manufacturer named. Any item which the State at its sole discretion determines to be the equal of that specified as defined in the Schedule, will be accepted. The award will be made to the lowest responsive and responsible bidder or offeror offering the functional equivalent to the brand name described in the specification. Thus, equivalent products of other manufacturers will be considered only if proof of equivalency is contained in or accompanies the bid.

5. LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWALS OF BIDS

- A. Any bids received at the office designated in block #6 of the Solicitation after the exact time specified for receipt will not be considered for award. (See Paragraph 4.10 of the Vendor's Manual for further discussion.)
- B. A bid may be amended and/or withdrawn by a vendor if the office issuing the bid receives the request in writing before the date and hour set forth in the bid form. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Submission of a subsequent bid shall normally constitute the withdrawal of any prior bid submitted by the same bidder or offeror on the same IFB.

6. PUBLIC OPENING OF BIDS

Bids will be publicly opened at the time and date specified on page 1 of the Solicitation document. The content of these solicitations will be made public in accordance with Paragraphs 1.9 and 2.4 of the Vendor's Manual. Bids will not normally be evaluated at the bid opening meeting. All bids will be opened at the location shown on page 1 of the solicitation.

7. SOLICITATION TERMS AND CONDITIONS

This solicitation/invitation for bid contains terms and conditions which shall govern the duties and responsibilities of both parties to any agreement which may be executed as a result of this solicitation/invitation for bid.

The terms and conditions contained herein are considered mandatory. NOTWITHSTANDING PARAGRAPH 5.4 OF THE Vendor's Manual, ANY MODIFICATION, ADDITION, CLARIFICATION, OR CHANGE TO THIS SOLICITATION BY THE BIDDER SHALL CAUSE THE BID TO BE REJECTED.

8. AWARD OF CONTRACT

Bids shall be evaluated and the responsive and responsible bidder offering the lowest price will be awarded the Contract. The State reserves the right to reject any and all bids in whole or in part and to waive any informality in the bids.

9. AWARD NOTICES

Ten days prior to actual award of the contract, DIT will issue a NOTICE OF INTENT TO AWARD or NOTICE OF AWARD to the successful bidder as discussed in paragraph 8 above.

A NOTICE OF INTENT TO AWARD OR A NOTICE OF AWARD will be mailed to any bidder submitting a self-addressed, stamped envelope with their bid.

NOTICES OF INTENT TO AWARD OR NOTICES OF AWARD will be posted in accordance with paragraph 6.3 of the Vendor's Manual.

TELEPHONIC REQUESTS FOR BID RESULTS WILL NOT BE HONORED.

10. FAILURE TO DELIVER

Failure to comply with the terms and conditions of the IFB or to deliver equipment, software or services identified in the solicitation at the price quoted may result in cancellation or rescission of the award/contract by the Commonwealth and may subject the Contractor to removal from DIT's Vendor Registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

11. AMENDMENT OF SOLICITATION

Any amendment or change to this solicitation will be issued in writing and will identify the changes to be made in the bid.

If the bid opening date is extended the new date and time will be clearly shown on the face of the amendment.

Bidders will be required to sign and return a copy of the amendment with their bid to indicate that they have received the document and are aware of the changes made.

12. ANTI-COLLUSION CERTIFICATION

By Bidder's signature on the face of this bid, Bidder certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same equipment, software, or services, and is in all respects fair and without collusion or fraud. Vendor understands collusive bidding is a violation of the Virginia Governmental Frauds Act and Federal Law and can result in fines, prison sentences, and civil damage awards. Bidder agrees to abide by all conditions of this bid and certifies that he or she is authorized to sign this bid for the bidder's firm.

13. DEMONSTRATIONS

The State reserves the right to require the Bidder to demonstrate to the satisfaction of the State, that the products offered will perform in a completely acceptable manner and to meet or exceed the specifications referenced in the solicitation. The demonstration site and time is subject to agreement between the State and Bidder. A Bidder refusing to demonstrate his products bid after determination that he is the apparent low responsive and responsible bidder may be removed from DIT's vendor registration file and ruled ineligible to participate in DIT's (and other agencies and institutions information technology) procurements for a period of 12 months.

14. PROTESTS OF AWARDS

All protests of awards shall be conducted in accordance with Chapter 9 of the Vendors Manual.

15. VENDOR REGISTRATION

AN AWARD WILL NOT BE MADE TO ANY BIDDER NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than the award date. Call (804) 371-5900 to request a registration form.

16. CONTRACT

Any contract which is awarded as a result of this solicitation, offer and award shall be between DIT and the Contractor. No other agency, institution or public body may negotiate in any way with the vendor concerning the items identified in the schedule or any terms and conditions of the contract. All problems associated with the resulting contract shall be brought to the attention of the Contracts Manager, DIT.

Specifications - Any comments or questions concerning the specifications, terms and conditions or any note contained in this solicitation shall be submitted, in writing to the issuing office (See Block #6 DIT Form #62) at least ten (10) days prior to the closing date.

17. DRUG FREE WORKPLACE

Each of the following acts is prohibited by the Contractor or his/her employees performing service under the terms of a contract resulting from this solicitation.

- a. Unlawful or unauthorized manufacture, distribution dispensing, possession or use of alcohol or other drugs at the workplace.
- b. Impairment or incapacitation in the workplace for the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).

By submitting their bids, bidders certify that they understand these prohibitions, and if awarded a contract as the result of this solicitation, they will comply. They also understand that a violation of these prohibitions is a breach of contract and can result in default action.

18. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder must invoke the protections of Code of Virginia, Section 11-52D, prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire bid document, line item prices and/or total bid prices as proprietary or trade secrets is not acceptable and will result in rejection of the bid.

**CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BID (IFB) #99-001**

GENERAL PROVISIONS

1. SCOPE OF CONTRACT

The following paragraphs contain the contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State", will acquire data processing equipment, software and services from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor."

2. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this contract shall be binding upon Contractor. For the purposes of this contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to hardware, software or services performance, or other physical design or functional characteristics of that which is offered;

3. INSTALLATION DATES

- a. The Contractor shall deliver/install Item #1 ready for use, by the installation date (day, month, year) identified as the required delivery date (RDD) in the Schedule. For Item #3 and #4, the RDD shall be the date this solicitation/contract is executed by the Contracts Manager, DIT.
- b. Any amendment by the State to this contract or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.
- c. If the equipment, software or services are not delivered/installed within the time specified in the Schedule, the State reserves the right to cancel the award of this contract and/or terminate this contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver/install the proposed equipment/services as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.16 of the Division of Purchases and Supply's Vendor's Manual dated January 1995.
- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

4. RISK OF LOSS OR DAMAGE

The State is relieved from all risks of loss or damage until clear and unrestricted title is transferred to the Commonwealth of Virginia pursuant to Section 14 of this contract.

5. TAXES - FEDERAL, STATE AND LOCAL

The Commonwealth of Virginia is exempt from Federal excise and all State and Local taxes; such taxes shall not be included in contract prices. Tax exemption certificates will be furnished if requested by the Contractor.

6. NEW EQUIPMENT/SOFTWARE AND SUBSTITUTE EQUIPMENT

Unless otherwise specifically requested in the Schedule, all equipment furnished under this contract shall be new equipment and in current production. All software provided under this contract shall be the latest version available to the general public as of the due date of this solicitation.

During the term of this contract, the vendor is not authorized to substitute any item for that equipment or software identified in the Schedule without the written permission of the Director, Acquisition Services Division, DIT. Violation of this condition shall be considered grounds for termination of the contract.

7. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.1-122 and Section 2.1-127 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs of paragraph 7. above.

8. NON-APPROPRIATION

All funds for payment of equipment, software or services ordered under this contract are subject to the availability of legislative appropriation for this purpose. In the event of nonappropriation of funds by the Legislature for the items under this contract, the Commonwealth will terminate this contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this contract for goods or services dependent on such federal funds without further obligation.

9. ASSIGNMENT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Agreement shall not be assignable, in whole or in part, to any other party without the Department of Information Technology's (DIT's) written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the DIT purchasing office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on DIT's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager DIT. Upon DIT's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, DIT of the assignment and shall supply the Controller with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event DIT receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Agreement, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after DIT's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The Acquisition Services Division of DIT shall promptly notify the Contractor of any assignment notice it receives.

10. GOVERNING LAW

This contract and any disputes arising hereunder shall be governed in accordance with the laws of the Commonwealth of Virginia and shall be deemed to have been executed and entered into within the Commonwealth of Virginia. Any litigation arising in connection with this agreement shall be brought in the courts of the Commonwealth of Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

If any term or provision of this contract shall be found to be illegal or unenforceable, then, notwithstanding such provision, the remainder of this contract shall remain in full force and effect, and such term or provision shall be deemed null and void.

11. HEADINGS NOT CONTROLLING

Headings used in this contract are for reference purposes only and shall not be considered to be a substantive part of this contract.

12. ENTIRE AGREEMENT

This contract, the solicitation, bid response, solicitation instructions and all equipment, software and services specifically listed in the Schedule, and the notes in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to equipment, software or services acquired by the State under the terms and conditions of this contract.

No other written documents regardless of form or content shall be executed by any agency for equipment, software or services acquired under this contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

13. MODIFICATIONS

This contract may be modified in accordance with Section 11-55 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the contract, the only authorized representative for the Commonwealth shall be the individual identified in block #14 of this solicitation or his duly designated alternate, and for the Contractor the person identified in block #9 of the solicitation. Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$10,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

14. TITLE

Clear and unrestricted title for any item of equipment purchased under this contract shall pass to the Commonwealth of Virginia whenever the agreed to purchase price is paid.

15. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

16. TERM

The term of this contract shall be from the date of award through the expiration of all delivery requirements identified in the Schedule.

17. VIRGINIA PUBLIC PROCUREMENT ACT

Employment Discrimination by Contractor Prohibited (Section 11-51, Code of Virginia).

a. During the performance of this contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against employee or applicant for employment because of race, religion, color, sex or national origin, or disabilities except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

b. The Contractor will include the provision of the foregoing paragraphs a.1, a.2 and a.3 in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

18. ADDITIONAL CERTIFICATIONS

Contractor hereby certifies its compliance with the following:

- a. Virginia Fair Employment Contracting Act.
- b. Virginia Governmental Frauds Act.
- c. Virginia Public Procurement Act.
- d. Federal Immigration Reform and Control Act of 1986.
- e. Virginians with Disabilities Act.
- f. Americans with Disabilities Act.
- g. Federal Civil Rights Act of 1964.

19. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this contract.

20. CONTRACTUAL RECORDS

All contractual books, records and other documents related to matters under this contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

21. LIABILITY

Be sure to read

Contractor shall maintain such personal injury and property damage liability insurance as necessary to protect itself from claims arising out of the performance of this contract. The Contractor shall indemnify and hold harmless the State, its agencies, employees and designated representatives from any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees, for personal injury and damage to real or personal property arising from the acts or omissions of the Contractor, its agents, officers, employees or subcontractors. Nothing contained herein shall be deemed as an express or implied waiver of the sovereign immunity of the State, or pledge of the full faith and credit of the State.

Except as stated in this provision, in no event shall either party be liable to the other party for any indirect, special or consequential damages arising out of any breach of its obligations under this agreement.

22. CONTINGENT FEE WARRANTY

The Contractor warrants that he/it has not employed or retained any person or persons not generally associated with Contractor for the purpose of soliciting or securing this agreement. The Contractor further warrants that he/it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon the award or making of this agreement. For breach of one or both of the foregoing warranties, the Commonwealth shall have the right to terminate this agreement without liability, or in its discretion, to deduct from the agreed fee, payment or consideration, or otherwise recover, the full amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

23. SITE PREPARATION

- a. Equipment environmental specifications, if required, for the equipment to be delivered under this contract shall be furnished in writing by the Contractor upon award. These specifications shall be in such detail to ensure that the equipment to be installed shall operate efficiently from the point of view of environment.
- b. The State shall prepare the site at its own expense and in accordance with the equipment environmental specifications provided by the Contractor.

24. ACCEPTANCE, TESTING AND COMPLIANCE WITH SPECIFICATIONS

All materials, equipment, software and services are subject to inspection and testing by the State, and any which do not meet or exceed the specifications or other requirements of the contract may be rejected. The State shall be given thirty (30) days from the completion of installation by the Contractor to test, evaluate and accept the materials, equipment, software and services delivered or furnished under this contract (provided that the user, in their sole discretion, may accept the same prior to expiration to the thirty (30) day period). If the Contractor's materials, equipment, software or services fail to meet the contract specifications or other requirements, including the specifications of the brand name (see paragraph 4 of the Solicitation Instructions), or those required by the Contractor's own technical documentation, then the same may be rejected and returned to the Contractor. Such rejection will terminate this contract and exempt the State from all costs incurred by the Contractor.

Acceptance shall be effective for the purpose of determining title to that which is delivered and for making payment, however, acceptance by the State following testing and evaluation during the thirty (30) day period shall not be conclusive that the materials, equipment, software or services conform in all respects to the contract specifications and other requirements. In the event that nonconformance therewith is discovered by the State after acceptance, whether due to a latent defect or otherwise, the Contractor shall take whatever action is necessary to conform the materials, equipment, software or services to the contract specifications and other requirements, including but not limited to modification or replacement of the same. The Contractor's failure to do so shall constitute breach of contract for which the State may exercise the remedies provided in the section herein entitled "Termination and Cancellation," in addition to and not in lieu of any other remedies available under Virginia law.

25. FIELD MODIFICATIONS AND/OR ENGINEERING CHANGES

Contractor sponsored modifications and/or engineering changes shall be made with the consent of the State at no additional charge for a period of one (1) year from the date of installation. The State reserves the right at all times to schedule these Contractor sponsored modifications and/or changes to minimize the impact on the daily operations of the State.

26. SUPPLIES

Authorized charges do not include operational supplies (e.g., paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any contractor of its choice.

27. GUARANTEE (WARRANTY)

Contractor will provide on-site warranty services (labor, parts and travel) for a period of not less than twelve (12) months as provided in the Schedule, beginning on the date of acceptance, at no cost to the State. Contractor (or his designated subcontractor) shall act as sole point of contact for all units repaired under warranty. All warranty services shall be provided during the Principal Period of Maintenance (PPM) which is hereby defined as twenty-four hours per day, seven days per week, 365 days per year, State holidays included. The Contractor shall respond to all requests for warranty service within two (2) hours after notification that a failure has occurred.

Prior to the expiration of the guarantee period, whenever equipment is shipped for mechanical repair or replacement purposes, the Contractor will bear all costs associated with returning the equipment to the Contractor's repair facility. When repair of the equipment is completed the Contractor shall bear all costs associated with returning the equipment to the State's original point of shipment. Cost of shipping includes but is not limited to, costs of packing, transportation, rigging, drayage and insurance for damage or loss. Contractor shall repair the equipment or provide an interim replacement product, within 8 hours of notification that a malfunction exists. Any interim product(s) will be provided at no additional cost to State, until the original product is returned, in good working condition.

All parts used under this agreement must be new parts or refurbished parts certifiable as new. Parts which have been replaced shall become the property of the Contractor.

28. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the equipment or services required by this contract or (b) the vendor shall repeatedly fail to respond to requests for maintenance or other services within the time limits set forth in the contract or (c) the vendor shall breach any of the other terms set forth within this agreement or (d) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event the Commonwealth will only be liable for cost incurred to the date of termination. All costs of deinstallation and return of the equipment will be the vendor's expense.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this contract in the event of any subsequent breach of any provisions of this agreement.

29 FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to contract terms the items set forth in the Schedule, Commonwealth may, in its own discretion, give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. Once State has effected a purchase from an alternate source (in accordance with the Virginia Public Procurement Act) the parties agree that the State may charge-back Contractor, in which case Contractor agrees to reimburse State for any difference in cost between the original contract price and the State's cost to cover from the alternate source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

30. DISPUTES

Contractual claims whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The public body will render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

A Contractor may not institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that Agency fails to render such decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 11-70, Code of Virginia or Administrative Appeals Procedure Section 11-71, Code of Virginia.

Any dispute, claim or cause of action filed by Contractor (or any party making such claim on behalf of or under the rights of Contractor, his agents or any subcontractor) shall be governed by Sections 11-69, 11-70, 11-71, Code of Virginia (1950), as amended, and any period of limitation set forth therein.

31. INVOICES

All invoices shall be rendered promptly after all equipment/software or services covered by the invoice have been accepted. Invoices for software support (if any) may be paid annually in advance upon the expiration of the warranty period set forth in this contract. All payments for monthly maintenance services shall be paid monthly in arrears. No invoice may include any costs other than those identified in the Schedule. Invoices shall provide at a minimum:

- 1 Type and description of the equipment, software or service;
2. Serial number, if any;
3. Charge for each item;
4. This Contract Number, and;
5. Contractor's Federal Identification Number (FIN);

32. PROMPT PAYMENT

Payment shall be due within thirty (30) days after (1) acceptance of all equipment, software or service, (2) receipt of a correct invoice for such payment, and (3) when applicable, receipt of the payment instruction form referenced in the paragraph entitled ("Assignments"), whichever is latest. Where payment is made by mail, the date of postmark shall be deemed to be the date of payment. Any amounts due the Commonwealth under the terms of this contract may be applied against Contractor's invoices with appropriate information attached.

In accordance with the Virginia Public Procurement Act, all proper charges for which payment is more than seven (7) days overdue shall accrue interest as provided in Sections 11-62.1 through 11-62.9 of the Code of Virginia. The rate of interest shall be determined in accordance with Section 11-62.5 of the Code of Virginia. In no event shall any interest penalty accrue, however, when payment is delayed because of a disagreement between the Commonwealth and the Contractor regarding the quantity, quality or time of delivery of any Product or Service or the accuracy or correctness of any invoice. The Contractor shall notify the Controller of the Department of Information Technology of all invoices that are in excess of thirty (30) days old.

33. PAYMENTS TO SUBCONTRACTORS

In accordance with Section 11-62.11 of the Code of Virginia, within seven days after receipt of amounts paid to the Contractor by the Commonwealth for work performed by a subcontractor, the Contractor shall

- a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor, or
- b. Notify the agency and subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the Commonwealth for work performed by the subcontractor, except for amounts withheld as allowed in (b) above. The Contractor shall provide its federal employer identification number (or social security number, if Contractor is an individual) to the Commonwealth as required by Section 11-62.11 (2) of the Code of Virginia. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. Nothing in this paragraph shall be construed as creating any obligation on the part of the Commonwealth or as authorizing any additional charge to the Commonwealth.

34. THIRD PARTY BILLING

All goods or services provided under this contract, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.

35. CREDITS

Any credits due the State under the terms of this contract may be applied against Contractor's invoices with appropriate information attached.

36. TRANSPORTATION AND PACKING OF EQUIPMENT

All shipments to the State's site(s) shall be made at the Contractor's expense. The Contractor shall make all arrangements for transportation and shall notify the receiving agency or institution upon shipment.

37. TITLE (SOFTWARE/FIRMWARE)

The Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

38. TERM OF LICENSE

The license(s) identified in the Schedule are purchased on a perpetual license basis (unless otherwise stated in the Schedule) and shall continue in perpetuity until canceled by the State or unless terminated in accordance with the provisions of this contract. The license(s) granted to the State are for the use of the software/firmware product at the using agency's computing facilities (site) and on the equipment or for the purpose identified in the Schedule.

39. WARRANTY SOFTWARE/FIRMWARE

Contractor warrants the operation of the software/firmware products identified in the Schedule for a period of twelve (12) months after acceptance. Products which fail to meet the vendor's published specifications will be returned (at the Contractor's expense) for replacement. Contractor agrees to replace the software/firmware product within 8 hours after a determination that the software/firmware has failed to meet the vendor's published specifications.

In addition, the Contractor agrees to provide all patches, fixes, revisions, updates, upgrades and releases to both the software/firmware and applicable documentation, which may be released by the software developer, along with unlimited telephone support for the duration of the warranty period.

40. TERMS OF USE

The State's rights in computer software/firmware developed at private expense may be restricted by the Contractor in accordance with this contract. As a minimum, however, the State shall have:

- a. Unlimited use of such software/firmware on the equipment for which it is acquired and any future upgrades of such equipment;
- b. Use of such software/firmware with a backup system if the system(s) for which or with which it was acquired is inoperative because of a malfunction, or during an emergency, or the performance or engineering changes or changes in features or model;
- c. The right to use such software/firmware at any state installation to which the computer(s) may be transferred by the State;
- d. The right to copy such computer programs for safekeeping (archives) or backup purposes;

41. CONFIDENTIALITY

Commonwealth agrees that when the software/firmware Product is proprietary to Contractor and has been developed/acquired at Contractor's expense, that it shall hold and use the software/firmware Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor permit any of its employees, agents, or representatives to knowingly divulge, any information with respect to the software/firmware Product, the technology embodied therein, or any other information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia. Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by Commonwealth and its employees, agents and representatives, including copying reproducible legends and markings on all physical components of the software/firmware Product.

42. YEAR 2000 WARRANTY

The Contractor by executing this solicitation/bid certifies and warrants that all software, firmware and hardware product(s) delivered to the Commonwealth of Virginia under this contract shall individually and as a system, accurately process all date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the product documentation provided by the Contractor.

Should the Commonwealth discover after acceptance that any software, firmware, hardware or system provided by Contractor is non-compliant with the requirements of the proceeding subparagraph, then Contractor shall provide, at no expense to the Commonwealth, all labor, materials and equipment necessary to make the products provided under this contract compliant with the requirements listed above. If the products provided by Contractor include any third party vendor's products, then Contractor shall be responsible for ensuring that the third party vendor's products are corrected in a timely manner and at no additional cost to the Commonwealth.

Contractor shall not be responsible for correcting any products (e.g. hardware, software, firmware) which were not provided under this contract or for correcting any previously owned Commonwealth products that are used in combination with Contractor's products. However, if this contract identifies any products or sources of data to be used in combination with products delivered under this contract, Contractor shall be responsible for providing all necessary interfaces or other appropriate means for assuring that data output from such other products or sources is automatically corrected before being processed by the products or system provided with this contract.

43. MAINTENANCE RESPONSIBILITIES (Item #1)

Upon expiration of the On-Site Warranty set forth in paragraph entitled Guarantee (Warranty) the Contractor shall provide an additional one year of on-site maintenance (labor, parts and travel) at the prices identified in the Schedule, and shall keep the equipment and software in good operating condition. Maintenance services shall not include electrical work external to the vendor's equipment. It shall not include repair or damage resulting from accident; transportation by the State between State sites; negligence on the part of State personnel; or causes other than ordinary use in the production environment in which the equipment is installed.

44. MAINTENANCE RESPONSE (All Items)

The Contractor shall provide on-site maintenance service under the same terms as set forth in the paragraph above entitled "GUARANTEE (WARRANTY)" for all equipment identified in the Schedule, with a two (2) hour on-site response time, during the Principal Period of Maintenance (PPM) which is hereby defined as twenty-four hours per day, seven days per week, 365 days per year, including holidays. For software, Contractor shall respond as set forth in Note #8 of the Schedule.

The State may alter the PPM by requesting a change, in writing, 30 days prior to the requested change in the PPM, subject to mutual agreement between the parties.

45. EQUIPMENT REPLACEMENT (Item #1)

Contract In the event that the equipment furnished under this agreement experiences continual maintenance downtime, while under maintenance and as a result the total system is inoperative in excess of 5% of total time available for daily service (e.g., 45 hours per week, 180 hours per month, 5% = 9 hours per month) for three consecutive calendar months, the State reserves the right to require the Contractor to replace the machine at no cost to the State. The replacement machine/device shall be installed no later than thirty (30) days after the State requests the Contractor to provide a replacement.

46. REMEDIAL MAINTENANCE (All Items)

Remedial Maintenance shall be performed after notification that the equipment is inoperative. The Contractor shall provide the user with a designated point(s) of contact and make arrangements to enable its maintenance personnel to receive such notification.

47. REPAIR PARTS (All Items)

All parts used under this agreement must be new parts or refurbished parts certifiable as new. Parts, which have been replaced, shall become the property of the Contractor.

48. RECONDITIONING (All Items))

Contractor stipulates that the equipment provided under this agreement will not require reconditioning when such equipment has been under warranty or constant maintenance agreement since the initial date of installation.

49. MALFUNCTION REPORTS (All Items)

The Contractor shall furnish a signed malfunction report to the user upon completion of each maintenance call. The report will list as a minimum all corrective action taken, parts used, and number of hours required to repair the equipment.

50. ADDITIONAL PROVISIONS FOR MAINTENANCE SUPPORT (All Items)

The maintenance prices listed in the price list include cost of labor, parts, factory overhaul, rehabilitation, transportation and substitute equipment as necessary for 95% effective performance. In those instances where it is necessary for the Contractor to return the equipment to his factory, he shall be responsible for all costs for the equipment from the time it leaves the State site until it is returned to the State site in good operating condition.

51. MAINTENANCE CONTINUITY (All Items)

Contractor will provide the required maintenance/software support services as defined in this contract for a period not to exceed five (5) years. Such services shall be provided in accordance with the Contractor's price, set forth in the schedule, for a period of twelve (12) months. Maintenance increases for additional periods shall be effective on the anniversary date for each succeeding year. All increases will be governed by the CPI-W index entitled "Other Services". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If maintenance prices remain the same or decrease for succeeding years, the State shall be afforded the opportunity to renew the maintenance services at the lowest price available to any other customer.

52. MAINTENANCE RENEWAL

Maintenance under this agreement shall be renewed at the option of the State. The State shall issue a written notification to the Contractor for each twelve (12) month period that maintenance services are required after the initial two year warranty/maintenance period for Item #1, and upon the expiration of the initial one year of maintenance for Item's #3 and #4.

53. ADDITIONAL MAINTENANCE SERVICES

Upon the mutual agreement of the parties to this contract, the Commonwealth may acquire additional on-site maintenance services under this contract. To acquire additional maintenance support services, the Commonwealth must comply with all aspects of the Virginia Public Procurement Act (VPPA), and the Contractor must agree to accept such additional equipment for maintenance. Additional items of equipment may be maintained under this contract if a written Delivery Order identifying the specific equipment to be maintained and its specific maintenance requirements is accepted by the Contractor.